



Private Letter Rulings

“Private letter rulings” are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer’s specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.

The ruling number is interpreted as follows: The “W” is for “Wisconsin”; the first four digits are the year and week the ruling becomes available for publication (80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.

Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication 111, “How to Get a Private Letter Ruling From the Wisconsin Department of Revenue.”

The following private letter ruling is included:

Sales and Use Taxes

Use tax liability on the hanging of an aircraft in Wisconsin
W 0625001 (p. 32)

✱ **W 0625001** ✱

April 3, 2006

Type Tax: Sales and Use Taxes

Issue: Use tax liability on the hanging of an aircraft in Wisconsin

Statutes: Sections 77.51(14r), 77.52(1), and 77.53(1) and (17r), Wis. Stats. (2003-04)

Wis. Adm. Code: Section 11.84, Wis. Adm. Code (July 2003 Register)

This letter responds to your request for a private letter ruling dated March 30, 2005.

Facts you provided:

Company A (the Taxpayer) is a limited liability company organized under the laws of the State of Delaware. The Taxpayer was formed to acquire and hold aircraft

used by the management personnel of a non-Wisconsin brother sister company, Company B, an Illinois corporation, in order to isolate and segregate the liabilities associated with owning and operating aircraft from the brother sister company, a real estate operating company (the Operating Company). The Operating Company owns real estate in the states of Indiana, Michigan, Illinois and Minnesota.

A helicopter (the “Aircraft”) will be used to provide transportation to the executives and employees of the Operating Company to enable them to visit and inspect the real estate owned by the Operating Company. Neither the Taxpayer nor the Operating Company currently transact any business in the State of Wisconsin; and none of the managers, members or owners of the Taxpayer or of the Operating Company are domiciled in Wisconsin. However, the owner of the Operating Company does maintain a vacation home in the State of Wisconsin.

The Aircraft was manufactured in the State of Texas and the Taxpayer took delivery of the Aircraft from the manufacturer in the State of Texas. No sales tax was paid to the State of Texas on the acquisition of the Aircraft based on the Texas exemption for aircraft that are sold for use and registration in another state before any use in Texas (other than transportation of the aircraft out of Texas).

The Aircraft will be hangared in Wisconsin because of the cost savings of hangaring the Aircraft in Wisconsin when compared to hangaring the Aircraft in Illinois, the location of the Taxpayer’s and the Operating Company’s principal place of business. The aircraft will be registered in Wisconsin. The hangar is owned by Company C, which is a related party to the Taxpayer. Except for the hangar, Company C does not own any property in Wisconsin. Company C is a Delaware limited liability company and none of its members, officers, directors, or managers are domiciled in Wisconsin.

The Taxpayer does not own any aircraft other than that which is the subject of this ruling request. The members of the Taxpayer are Individual D and Company E.

The Taxpayer does not have any tangible personal property or real estate in Wisconsin, other than aircraft and property such as hangars, accessories, attachments, fuel,

and parts required for operation of aircraft. The corporate member of the Taxpayer, Company E, does not own any real or tangible personal property in Wisconsin and is not organized under the laws of Wisconsin. It is organized under the laws of Illinois. Furthermore, Company E does not file a consolidated return for federal income tax purposes.

The Taxpayer is not currently being audited by the department with respect to the issue on which the ruling is requested; and, to the best knowledge of the Taxpayer, the issue or an identical issue is not in the return of the Taxpayer or of a related party to the Taxpayer within the meaning of Section 267 of the Internal Revenue Code of 1986, as amended (IRC) or a member of an affiliated group of which the Taxpayer is also a member within the meaning of IRC Section 1504.

Request:

The Taxpayer requests that the department rule that the hangaring of the Aircraft in the State of Wisconsin will not result in a Wisconsin use tax liability to the Taxpayer since the Aircraft is exempt from Wisconsin use tax pursuant to sec. 77.53(17r), Wis. Stats. (2003-04), and sec. Tax 11.84(1)(e), Wis. Adm. Code (July 2003 Register).

Ruling:

Under the facts you provided, the Taxpayer has fulfilled the requirements of sec. 77.53(17r), Wis. Stats. (2003-04), and the hangaring of the Aircraft in Wisconsin does not result in a Wisconsin use tax liability to the Taxpayer.

Analysis:

Section 77.52(1), Wis. Stats. (2003-04), imposes Wisconsin sales tax on the retail sale, lease, or rental of tangible personal property in Wisconsin.

The tax imposed by sec. 77.52(1), Wis. Stats. (2003-04), does not apply to the manufacturer's sale of the Aircraft to the Taxpayer, because the sale did not occur in Wisconsin. The sale of the Aircraft to the Taxpayer occurred in the State of Texas, where the Taxpayer took delivery of the Aircraft from the manufacturer.

As provided in sec. 77.51(14r), Wis. Stats. (2003-04), a sale or purchase of tangible personal property is deemed to have been completed at the time when and the place where possession is transferred from the seller or the seller's agent to the purchaser or the purchaser's agent.

Section 77.53(1), Wis. Stats. (2003-04), imposes Wisconsin use tax on the storage, use, or other consumption in Wisconsin of tangible personal property purchased from any retailer, at the rate of 5% of the sales price of that property.

Section 77.53(17r), Wis. Stats. (2003-04), provides:

“This section does not apply to an aircraft if all of the following requirements are fulfilled:

- (a) It is purchased in another state.
- (b) Its owner or lessee has paid all of the sales and use taxes imposed in respect to it by the state where it was purchased.
- (c) If the owner or lessee is a corporation, that corporation, and all corporations with which that corporation may file a consolidated return for federal income tax purposes, neither is organized under the laws of this state nor has real property or other tangible personal property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.
- (d) If the owner or lessee is a partnership, all of the corporate partners fulfill the requirements under par. (c) and none of the general partners and none of the limited partners who has management or control responsibilities is domiciled in this state and the partnership has no other tangible personal property and no real property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.
- (dm) If the owner or lessee is a limited liability company, all of the corporate members fulfill the requirements under par. (c) and none of the managers and none of the members who has management or control responsibilities is domiciled in this state and the limited liability company has no other tangible personal property and no real property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft;

in this state at the time the aircraft is registered in this state.

- (e) If the owner or lessee is an individual, the owner or lessee is not domiciled in this state.
- (f) If the owner or lessee is an estate, trust or cooperative; that estate, that trust and its grantor or that cooperative does not have real property or other tangible personal property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.
- (g) The department has not determined that the owner, if the owner is a corporation, trust, partnership or limited liability company, was formed to qualify for the exception under this subsection.”

Each of these requirements is discussed below.

- (a) This requirement is met. Because the Taxpayer took delivery of the Aircraft from the manufacturer in the State of Texas, the Taxpayer purchased the Aircraft in a state other than Wisconsin.
- (b) This requirement is met. Because an exemption from Texas sales and use taxes applied to the Taxpayer’s purchase of the Aircraft, no sales or use taxes were imposed by the State of Texas on this transaction.
- (c) This requirement does not apply because the owner is not a corporation.

(d) This requirement does not apply because the owner is not a partnership.

(dm) This requirement is met. The corporate member of the Taxpayer, Company E, fulfills the requirements under sec. 77.53(17r)(c), Wis. Stats. (2003-04) (i.e., Company E is not organized under the laws of Wisconsin, it does not own any real or tangible personal property in Wisconsin, and it does not file a consolidated return for federal income tax purposes). None of the managers or members of the Taxpayer are domiciled in Wisconsin. Finally, the Taxpayer does not have any tangible personal property or real estate in Wisconsin, other than aircraft and property such as hangars, accessories, attachments, fuel, and parts required for operation of aircraft.

(e) This requirement does not apply because the owner is not an individual.

(f) This requirement does not apply because the owner is not an estate, trust, or cooperative.

(g) This requirement is met. The Wisconsin Department of Revenue has not determined that the Taxpayer was formed to qualify for the exemption provided in sec. 77.53(17r), Wis. Stats. (2003-04). The taxpayer was formed to acquire and hold aircraft used by the management personnel of the Operating Company, in order to isolate and segregate the liabilities associated with owning and operating aircraft from the Operating Company.